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14 Attorneys for Defendant

15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,  
18  
19 Plaintiff,

20 vs.

21 STEVEN CARROLL DEMOCKER,  
22  
23 Defendant.

) No. P1300CR20081339

) Div. 6

) NOTICE OF FILING:

) (1) PROPOSED STATEMENT  
24 TO JURORS

) (2) APPLICATION FOR  
25 CONDITIONAL STAY

26 Steven DeMocker, through his counsel, files herewith two documents for  
27 this Court's consideration. The first document is defense counsel's Proposed  
28 Statement to Jurors. As the Court requested on May 28, 2010, this is our attempt  
to provide for the Court's use, and for the State's consideration, a statement that

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA ✓

2010 JUN -1 PM 4:05

JEANNE HICKS, CLERK

BY: *Katherine Glenn*

1 might be used tomorrow when the jury panel returns to this Court. The second  
2 document is Defendant's Application for Conditional Stay—a request that is  
3 today premature but which may become ripe tomorrow or whenever the Court  
4 concludes this process if it thereafter orders that a jury panel be selected from this  
5 group of prospective jurors.  
6  
7

8 We wish to underscore that both of these documents are submitted today in  
9 the hope that they will aid the Court and counsel. There are numerous  
10 unforeseeable aspects to the process we will embark on tomorrow. We hope that  
11 the Proposed Statement aids in clarifying some of these issues. We further hope  
12 that a Special Action will not ensue from this process, and Mr. DeMocker's  
13 counsel have made no decision about the filing of a Special Action.  
14  
15

16 Respectfully submitted this 1<sup>st</sup> day of June, 2010  
17  
18

19 By: 

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21 P.O. Box 4080  
22 Prescott, Arizona 86302

23 OSBORN MALEDON, P.A.  
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28 Attorneys for Defendant

1  
2 **ORIGINAL** of the foregoing hand delivered for  
3 filing this 1<sup>st</sup> day of June, 2010, with:

4 Jeanne Hicks  
5 Clerk of the Court  
6 Yavapai County Superior Court  
7 120 S. Cortez  
8 Prescott, AZ 86303

9 **COPIES** of the foregoing hand delivered and e-mailed this  
10 this 1<sup>st</sup> day of June, 2010, to:

11 The Hon. Thomas B. Lindberg  
12 Judge of the Superior Court  
13 Division Six  
14 120 S. Cortez  
15 Prescott, AZ 86303

16 Joseph C. Butner, Esq.  
17 Yavapai Courthouse Box

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## **Statement to Prospective Jurors**

Over the last four weeks each of you has been involved in what is known as the jury voir dire process in this case. Beginning in late March and into the first part of April, each of you came to court and filled out a detailed questionnaire. You then returned for group and individual questioning. Now, at this stage, you have been called back because each of you is potentially eligible for service on the jury that will be empanelled for this case. Everyone here appreciates your time and patience with us throughout this process.

The Court has asked you to come here today for two reasons. First, we want to determine whether your situation has changed in any way that might be material to your service as jurors. To determine that, I will ask you the same four questions I asked each of you when you came in for individual questioning in May. Second, the Court and counsel wish to advise you that this is no longer a death penalty case. We now have to talk about that, since so many of the questions you answered in the written questionnaires and by lawyers had to do with the possibility of the death penalty.

Let me first ask you here as a group the same 4 questions we posed to you when you were here before. If your answer is “yes” to any of these questions, please just raise your hand. As in the past, it remains very important that you be painstakingly honest in your answers, and if your answer is “yes” to any question

we may ask, we ask that you tell us that by raising your hand, but please hold any explanation until we can talk to you individually as we did when you were here before.

(1) Has anything about the circumstances of your life changed since you were in this courtroom and answered questions last month? We still anticipate that the trial will take as much as two months and may go into August. Have any of you discovered any reason that might prevent you from serving for that extended period of time? If so, please raise your hand.

(2) Have any of you read, seen or heard anything about this case since you were here last month? The Court is aware that there have been news stories in the *Arizona Republic* and the *Prescott Courier* recently. Have any of you seen those articles or heard about them or become aware of other information having anything to do with this case. Again, as I told you before, you are certainly not in any trouble if you have heard additional information; we just need to know about it so that we can inquire further with you.

(3) Similarly, have you done any research whatsoever about this case? Have you visited the scene? Have you asked about or heard anything from anyone about this case?

(4) Please look around at the other potential jurors assembled here today. Do you know—or think you might know—anyone you see sitting here today? If so, please raise your hand.

Thank you. I now want to inform you about the change in circumstances that has occurred regarding the possibility of the death penalty in this case. The death penalty has been dismissed. This is an important change in the circumstances of this trial for several reasons. First and foremost, the dismissal of the death penalty changes materially the role that you as jurors might play in this case. You may remember that when I spoke to you in small groups, I explained that in the typical criminal case the jury has no role in deciding the punishment. Ordinarily, the jury only decides guilt or innocence, and all questions of punishment are left to the Court. Indeed, in the typical case, jurors are not even informed of the possible range of punishment.

Now, because of the change in this case, your role will be *only* to decide whether the State has met its burden to prove guilt beyond a reasonable doubt.

The Court and the lawyers representing both sides are concerned that this change of circumstance might lead you to reach erroneous conclusions about the reasons for this change. I am asking you not to speculate about

what brought about the decision to dismiss the death penalty. You should not consider that this dismissal says anything—one way or the other—about the strength or weakness of the State’s proof. The prosecution has decided to ask that the death penalty be dismissed, and I have granted that motion. The State’s reasons must not be the subject of guesses or speculation by any of you. You should also understand that this decision was not in any way the result of any agreement between Mr. DeMocker and the State.

We all know that it may be difficult for you as jurors to eliminate any consideration of the death penalty. It may be difficult not only because you cannot now consider the punishment, but you may also now not consider in any way other things you were told in the course of your involvement in this case. Specifically, I am instructing you to disregard what you may have been told by me and the lawyers about having to reach a decision with regard to whether there was an “aggravating circumstance” in this case. You were told that “pecuniary gain” was a possible death penalty aggravator that you might consider at the second stage of the trial, if you first found guilt beyond a reasonable doubt. You must now disregard entirely anything you have heard in this courtroom on the subject of aggravating circumstances and limit your focus to the evidence that will be presented in court during the trial. Please understand that I am not instructing you to completely

disregard the term “pecuniary gain” but I am instructing you not to consider it in regard to the concept of an aggravating factor any longer. There may or may not be evidence of an alleged motive, and if evidence is admitted that relates to motive, you will be instructed as to how you may consider it, but under no circumstances are you to consider in any way anything you heard about this subject during your individual or group questioning.

Also, most if not all of you were asked specific questions relating to what are known as “mitigating circumstances.” Many of you were given specific examples of possible mitigating evidence. That information is now also entirely irrelevant to the charge you are to consider, and I am asking you to put any of that information out of your minds as well. Again, I need to be clear. Mr. DeMocker’s life history, his lack of a criminal history, the relationship with his family and his daughters—things that were mentioned to many of you both by the State and Mr. DeMocker’s attorneys—are now not relevant for your consideration except to whatever extent information of this type in introduced in this courtroom on the question of guilt or innocence. I already told you that these considerations would become specifically relevant only as they might relate to what I described as the third phase of this trial. Now I am underscoring the importance of considering any such information about Mr DeMocker only as it is introduced into



evidence in the course of the trial. In short, the concepts of “aggravating factors” and “mitigating circumstances” are no longer part of the terminology you will consider in this case, and you are not to give them any further consideration.

Finally, you were told that there are two possible forms of life sentence that might have been available should Mr. DeMocker be convicted in this case. I must now instruct you that you are to give no thought to the existence of any available punishment whatsoever. Punishment will now be solely the responsibility of the Court, and that responsibility will only arise if Mr. DeMocker is found by you to be guilty beyond a reasonable doubt of either charge against him. Remember, he is presumed innocent throughout this trial and the burden is always on the State to prove him guilty beyond a reasonable doubt.

Throughout this process we asked you to be painstakingly honest with us. We continue to ask you to do that. Some of you may honestly feel that you cannot ignore what you have read and heard since the day you filled out your questionnaires. Some of you may simply be unsure whether you completely understand what the Court has told you this morning. You may have many questions. Unfortunately, there is not more that the Court can share with you about this change of circumstances, but we want each of you

to have the opportunity talk privately with the Court and counsel about this decision. To that end, the Court will be calling each of you briefly back into this courtroom to answer your questions, if we can. All of us are concerned that we know whether you will or will not be comfortable that this change in the role you will be asked to play in this case. We need to know whether this development with respect to the dismissal of the death penalty might cause any of you to doubt your ability to feel that you can and should remain a part of this jury panel.

The Court's first concern must always be that the accused get a fair trial and that the jury not be distracted for any reason from focusing exclusively on the evidence presented in this courtroom. You already have an awesome responsibility. We know that this change may add in many ways to the challenge you face as a juror. Disregarding information you have heard is often difficult to do, and it would be quite understandable if any of you were to say honestly now that you do not believe you can put out of your minds what you have heard and seen, and if that is the way you feel, you should definitely tell us. In fact, I am instructing you to tell us that when you come back in for individual discussion with us.

Phil will now take you back down to the jury assembly room and we will be calling you back here as promptly as we reasonably are able. Please

remember my admonition that you have no communication with each other or with anyone outside this panel. It is very important at this stage that each of you comply with this instruction. Thank you again.

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